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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
DELCOTTO, GREGORY R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,196	PEDERSEN ET AL.	
	Examiner	Art Unit	
	Gregory R. Del Cotto	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *RCE filed 11/23/05*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 13-34* is/are pending in the application.

4a) Of the above claim(s) *8-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 13-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-7 and 13-34 are pending. Claim 12 has been canceled and claims 8-11 have been withdrawn from consideration as being drawn to a non-elected invention. Applicant's amendments and arguments filed 5/2/05 have been entered. Note that, Applicant's election of the alkoxylated amine compound of Formula III has been carried over (applied) to this request for continued examination.

Note that, for purposes of examination, the Examiner asserts that the limitation "the composition providing a clear concentrate composition..." simply requires that the composition is capable of providing a clear concentrate, and does not require that the composition as claimed is a clear concentrate. Additionally, note that, the Examiner has interpreted the term "concentrate" to encompass solid or liquid compositions which may be concentrates suitable for dilution.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/23/05 has been entered.

Objections/Rejections Withdrawn

The objections/rejections as set forth in the Office action mailed 8/24/05 have been withdrawn:

None.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 6,617,303) in view of Baker et al (US 2002/0119907) or Hei et al (US 2002/0072288).

Smith et al teach surfactant compositions containing ethoxylated amines. The disclosed surfactant compositions may be used in the formulations of heavy duty laundry detergents, herbicide emulsifiers, hard surface cleaners, bathroom cleaners, all-

purpose cleaners, car wash detergents, janitorial cleaners, and light duty liquid detergents. The detergent compositions include at least one anionic surfactant. See column 2, lines 19-35. Suitable ethoxylated ether amines have the same formula as Formula III as recited by the instant claims. See column 3, lines 10-20. The surfactant composition includes from about 8% to 35% of anionic surfactants which include at least one of alkyl benzene sulfonate, alkyl sulfate, alkyl ether sulfate, etc., from about 8% to about 35% of the surfactant actives by weight of an ethoxylated surfactant wherein the ethoxylated surfactant is at least one of ethoxylated amine; from about 15% to about 55% of a nonionic surfactant wherein the nonionic surfactant includes at least one of nonylphenol ethoxylate, alcohol ethoxylate, ethylene oxide/propylene oxide block copolymer; from 10% to about 90% by weight water, from about 0% to about 9% neutralizing compound wherein the neutralizing compound includes at least one of alkanolamine, alkylamine, ammonium hydroxide, sodium hydroxide, potassium hydroxide, or mixture thereof. See column 3, lines 30-65.

Additionally, amphoteric surfactants may be used in the compositions and include Rewoteric AMB 12P (cocamidopropyl dimethyl betaine), Rewoteric AM TEG (tallow glycinate), Rewoteric AM (cocoamphopropionate), etc. See column 16, lines 25-45. The compositions may be in liquid form with a solvent such as water, methanol, ethanol, isopropanol, etc. See column 17, line 60 to column 18, line 40.

Smith et al do not teach the use of an antimicrobial carboxylic acid or a clear composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the

other requisite components of the composition in the specific proportions as recited by the instant claims.

Baker et al teach compositions for treating shoes, especially leather-containing shoes, such as athletic shoes. More particularly, the present invention relates to compositions applied to one or more shoes in need treatment prior to and/or during and/or after washing the shoes for imparting a desired benefit to the shoes such as cleaning and/or conditioning and/or disinfecting and/or deodorizing. See Abstract. The compositions include one or more benefit agents selected from the group consisting of cleaning agents, conditioning agents, disinfecting agents, odor control agents, and mixtures thereof. See para. 9. The water content of the concentrated liquid treating compositions may be less than or equal to about 50% by weight of the treating compositions. See para 96. Citric acid and soluble salts thereof are Ca/Mg removal agents that are suitable for the treating compositions. See para. 165. Additionally ethane-1-hydroxy-1,1-diphosphonate and other known phosphonates may be used in the compositions. See para. 172. Suitable anionic surfactants include C11-C18 alkyl benzene sulfonates, C10-C20 alkyl sulfates, etc. See para. 174. Suitable nonionic surfactants include ethoxylated alcohols, amine oxides, alkylpolysaccharides, fatty acid amide surfactants, etc. See para. 188 to para. 209. Suitable amphoteric surfactants include C12-C18-betaines, etc. See para. 255.

Disinfecting agents may also be used in the compositions and include organic acids, preferably fatty acids such as octanoic acid, nonanoic acid, and/or decanoic acid.

See para. 397. Specifically, Baker et al teach teach treating compositions containing nonanoic acid, water, isopropanol, etc. See para. 662.

Hei et al teach a method for antimicrobial treatment comprising applying to microbes a composition containing a diluting solvent, an antimicrobially-active solvent, and an optional cosolvent, surfactant, or additional antimicrobial agent, wherein the amount of antimicrobially-active solvent or additional antimicrobial agent is sufficiently high and amount of cosolvent or surfactant is sufficiently low so that the composition will provide greater than a 1-log order reduction in the population of bacteria or spores. Compositions for use in the method can be prepared as concentrates, and used full strength or in diluted form. See Abstract. When applied to surfaces containing microbes, the compositions exhibit antimicrobial action. See para. 20. In some compositions, the amount of antimicrobially-active solvent is sufficiently high and the amount of cosolvent or surfactant is sufficiently low so that the composition forms a quasi-stable antimicrobial composition. Such compositions have a clear or slightly cloudy appearance. See para. 22. Preferred antimicrobially-active solvents include C1-C16 protonated carboxylic acids such as butyric acid, octanoic acid, heptanoic acid, nonanoic acid, etc. See para. 29. Also, the compositions may include an additional antimicrobial agent such as butyric acid, heptanoic acid, citric acid, adipic acid, etc., and these additional antimicrobial agents may be used in amounts from 0.01 to 30% by weight of the concentrate. See paras. 46 and 47.

A variety of surfactants can be used in the compositions and general, the surfactant and identity and use level is selected based upon the characteristics of the

chosen antimicrobially-active solvent and the solubility of the chosen amtimicrobially-active solvent in the diluting solvent. Suitable surfactants include anionic, nonionic, cationic, amphoteric surfactants, etc. The amount of surfactant should be just sufficient to provide the desired level of antimicrobial activity and generally, the surfactant will be present in amounts of no more than 10% by weight. See paras. 34-45. The compositions may be used in a variety of applications such as cleaning hard surfaces, woven or nonwoven fabrics, linens, etc. See para. 52.

Smith et al do not teach the use of an antimicrobial carboxylic acid or a clear composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an antimicrobial carboxylic acid such as octanoic acid in the cleaning composition taught by Smith et al, with a reasonable expectation of success, because Baker et al or Hei et al teach the use of an antimicrobial carboxylic acid such as octanoic acid in a similar textile or fabric cleaning composition as a disinfectant and Smith et al teach the formulation of all-purpose, hard-surface, laundry detergents compositions, etc., in general which would desirably include the disinfectants of Baker et al or Hei et al.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the

composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Smith et al in combination with Baker et al or Hei et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of Smith et al in combination with Baker et al or Hei et al would suggest clear compositions as recited by the instant claims because Smith et al in combination with Baker et al or Hei et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claims 1-7, 13-17, 19, 20, and 22-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Man (US 6,425,959) in view of Baker et al (US 2002/0119907) or Hei et al (US 2002/0072288).

Man teaches organic compositions, used near or in concentrate, which ar effective in removing complex organic soils from wood, metal, and other hard surfaces. The compositions comprise nonionic surfactants, silicone surfactants, hydrotropes, and other optional functional materials including sequestrants. See Abstract. Suitable chelating agents include 1-hydroxyethane-1,1-diphosphonic acid, aminotri(methylenephosphonic acid), etc. see column 6, lines 15-60. Suitable nonionic surfactants include alkoxylated amines which have the same general formula as formula III of the instant claims. See column 7, line 40 to column 8, line 15. Suitable hydrotrope

solubilizers include small molecule anionic surfactants such as C1-C5 substituted benzene sulfonic acid or naphthalene sulfonic acid. See column 9, line 35 to column 10, line 12. Additionally, the compositions may include ingredients such as ethanol, isopropanol, etc. Acidulants may also be included in the compositions such citric acid, tartaric acid, adipic acid, etc. See column 10, line 45 to column 11, line 20. The detergent compositions may be used as a glass cleaner, hard surface cleaner, laundry detergent, etc. See column 11, lines 20-69.

Man et al do not teach the use of an antimicrobial carboxylic acid or a clear composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Baker et al or Hei et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an antimicrobial carboxylic acid such as octanoic acid in the cleaning composition taught by Man et al, with a reasonable expectation of success, because Baker et al or Hei et al teach the use of an antimicrobial carboxylic acid such as octanoic acid in a similar textile or fabric cleaning composition as a disinfectant and Man et al teach the formulation of all-purpose, hard-surface, laundry detergents compositions, etc., in general containing various optional ingredients and which would desirably include the disinfectants of Baker et al or Hei et al.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid

antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Man et al in combination with Baker et al or Hei et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of Man et al in combination with Baker et al or Hei et al would suggest clear compositions as recited by the instant claims because Smith et al in combination with Baker et al or Hei et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claims 1-7, 13-17, 19, 20, 22-26, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907) in view of Smith et al (US 6,617,303).

Baker et al are relied upon as set forth above. However, Baker et al do not teach the use of an alkoxylated amine surfactant or a clear composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by Baker et al, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, Baker et al teach the use of numerous types of nonionic surfactants which would encompass alkoxylated amine surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Baker et al in combination with Smith et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of Baker et al in combination with Smith et al would suggest clear compositions as recited by the instant claims because Baker et al in combination with Smith et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claims 1-7, 13-17, 19, 20, 22-26, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hei et al (US 2002/0072288) in view of Smith et al (US 6,617,303).

Hei et al are relied upon as set forth above. However, Hei et al do not teach the use of an alkoxylated amine surfactant or a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by Hei et al, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, Hei et al teach the use of numerous types of nonionic surfactants which would encompass alkoxylated amine surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of Hei et al in combination with Smith et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated

amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Claims 1, 2, 5-7, 13-17, 19, 20, 22, 24-32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al (US 2003/0070692) in view of Smith et al (US 6,617,303).

'692 teaches methods and compositions for cleaning and sanitizing carpet or upholstery. Preferably, the cleaning composition includes from about 5 to 10% by weight aminocarboxylate, about 5 to 10% nonionic surfactant, about 15 to 25% alkali metal carbonate, about 10-15% carboxylic acid, and about 50 to 60% hydrogen peroxide adduct. See para. 49. Examples of suitable phosphonate builders or sequestrants include organic-phosphonic acids and alkali metal salts thereof such as aminotri(methylenephosphonate), citric acid, etc. See paras. 113-115 and para. 128. Suitable surfactants include anionic, nonionic, and zwitterionic surfactants. Suitable anionic surfactants include alkyl sulphonates, alkyl benzenesulfonates, sulfated alcohols, sulfated alcohol ethoxylates, etc, and suitable nonionic surfactants includesurfactants of C6-C24 alcohol ethoxylates having 1 to about 20 ethylene oxide groups, ethoxylated amines under the tradename Tomah, etc. See paras. 94 to 100. Liquid use compositions can be formed by mixing the solid or agglomerate cleaning composition with a liquid carrier. Preferably, the liquid is water and the liquid use composition is an aqueous preparation. See para. 197.

'692 is relied upon as set forth above. However, '692 does not teach the use of an alkoxylated amine surfactant or a composition containing a carboxylic acid

antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by '692, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, '692 teaches the use alkoxylated amine surfactants in general.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '692 in combination with Smith et al suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of '692 in combination with Smith et al would suggest clear compositions as recited by the instant claims because '692 in combination with Smith et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claims 1-7, 13-19, 22-25, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 95/04459 in view of Smith et al (US 6,617,303).

'459 teaches microbicidal compositions for sanitizing inanimate surfaces. More specifically, the invention relates to microbicidal compositions which include an octanoic carboxylic acid and a sulfur containing compound as an antimicrobial agent. The composition is preferably safe for incidental human contact as well as food contact surfaces without requiring a post-santizing rinse. The microbicidal compositions are suitable for dairy farms, food and beverage processing plants, food preparation kitchens, food serving establishments, child-care, nursing care and hospital-care applications as well as for general utility in domestic households and institutions. See page 1, lines 5-20. The compositions also comprise a carrier. Suitable carriers include alcohols such as ethanol, isopropanol, etc. Any of these compounds may be used singly or in combination with another organic or inorganic carrier or, in combination with water, or in mixtures thereof. The composition may take the form of a neat solution or liquid concentrate. See page 14, lines 1-25.

The carrier may also comprise any number of surfactants or surfactant combinations. Suitable surfactants include anionic and nonionic agents such as polyoxyethylene glycerol esters, polyoxyethylene and polyoxypropylene block copolymers, dioctylsodium succinate, etc. See page 15, lines 5-17. The composition may also contain any number of adjuvants. Suitable adjuvants include acidulants useful in lowering the pH of the composition and include lactic acid, phosphoric acid, citric acid, malic acid, etc. The compositions may also comprise surface tension altering

constituents such as various anionic and nonionic surfactants. Nonionic surfactants which are especially preferred include those surfactants having about 5 to 30 moles of ethoxylation and about 10-80 of propoxylation. See page 20, lines 10-20. Note that, sodium lauryl sulfate is used as an anionic surfactant in the Examples of '459.

'459 does not teach the use of an alkoxylated amine surfactant or a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition taught by '459, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, Baker et al teach the use of numerous types of nonionic surfactants which would encompass alkoxylated amine surfactants.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '459 in combination with Smith et al

suggest a composition containing a carboxylic acid antimicrobial agent, alkoxylated amine, and the other requisite components of the composition in the specific proportions as recited by the instant claims.

Note that, the Examiner asserts that the teachings of '459 in combination with Smith et al would suggest clear compositions as recited by the instant claims because '459 in combination with Smith et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907), Hei et al (US 2002/0072288), Smith et al (US 2003/0070692), all in view of Smith et al (US 6,617,303), as applied to the rejected claims above, and further in view of Wulff et al (US 5,962,399).

Baker et al, Hei et al, '692 are relied upon as set forth above. However, Baker et al, Hei et al, or '692 do not teach the use of cocamidopropyl betaine in addition to the other requisite components of the composition as recited by the instant claims.

Wulff et al teach a process for preparing high detergency or surfactant alkyl polyglycoside compositions and a purified alkyl monoglycoside. See Abstract. Additionally, Wulff et al teach the preparation of alkyl glycoside compositions having maximum tand-alone surfactant properties for specific end-use applications. See column 6, lines 40-60. Suitable amphoteric surfactants include the betaines such as cocamidopropyl betaine, etc. See column 27, lines 20-35. The compositions may be used as laundry detergents. See column 28, lines 10-25.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use cocamidopropyl betaine in the cleaning composition taught by Baker et al, with a reasonable expectation of success, because Wulff et al teach the use of cocamidopropyl betaine in a similar detergent composition and further, Baker et al, Hei et al, or '692 teach the use of amphoteric surfactants in general.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al (US 2002/0119907) or Hei et al (US 2002/0072288), both in view of Smith et al (US 6,617,303) as applied to claims 1-7, 13-17, 19, 20, 22-26, and 28 above, and further in view of Penninger et al (US 6,228,827).

Baker et al or Hei et al are relied upon as set forth above. However, Baker et al or Hei et al do not teach the use of 1-hydroxy ethylidene-1,diphosphonic acid as recited by the instant claims.

Penninger et al teach laundry detergents in liquid or gel-form which contain a mutated protease. See Abstract. The detergent compositions may also contain heavy metal complexing agents such as 1-hydroxyethane-1,1-diphosphonic acid, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use a complexing agent such as 1-hydroxyethane-1,1-diphosphonic acid in the cleaning composition taught by Baker et al or Hei et al, with a reasonable expectation of success, because Penninger et al teach the equivalence of 1-hydroxyethane-1,1-diphosphonic acid to its phosphonate salt in a similar composition and, further, Baker et al teach the use of ethane-1-hydroxy-1,1-diphosphonate as a complexing agent and Hei et al teach the equivalence of chelating agents in general.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-7, 13-25, and 29-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-37 of U.S. Patent No. 6,593,283 in view of Smith et al (US 6,617,303).

Claims 10-37 of US 6,593,283 encompass all of the material limitations of the instant claims except for the inclusion of an ethoxylated amine surfactant in addition to the other requisite components of the composition as recited by the instant claims.

Smith et al are relied upon as set forth above.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkoxylated amine surfactant in the cleaning composition claimed by US 6,593,283, with a reasonable expectation of success, because Smith et al teach that the addition of alkoxylated amine surfactants to similar detergent compositions provides improved detergent performance and further, US 6,593,283

claims use of nonionic surfactants which would encompass alkoxylated amine surfactants.

Response to Arguments

With respect to the rejections using Smith et al in view of Baker et al, Baker et al in view of Smith et al, and '459 in view of Smith et al, Applicant states that none of these references or combination of references suggest a combination of required components at concentrations directed to achieving a clear and stable composition that provides for antimicrobial activity. In response, note that the Examiner asserts, as stated above, that the teachings of Smith et al in combination with Baker, Baker et al in combination with Smith, and '459 in combination with Smith et al suggest compositions which are clear and have antimicrobial properties as recited by the instant claims because the teachings of Smith et al in combination with Baker, Baker et al in combination with Smith, and '459 in combination with Smith et al suggest compositions containing the same components in the same proportions as recited by the instant claims.

With respect to Smith et al, Applicant states that Smith et al do not discuss antimicrobial activity at all. In response, while Smith et al do not discuss antimicrobial activity, the Examiner asserts that one of ordinary skill in the art would have been clearly motivated to use the disinfecting agent as taught by Baker et al in the composition taught by Smith et al, with a reasonable expectation of success, because Baker et al teaches the use of carboxylic acids as disinfecting agents in similar textile cleaning compositions and further, disinfection is a desirable property for an all-purpose or textile cleaning composition in general.

As noted previously, Applicant states that data has been presented in the specification which shows the unexpected and superior properties of the claimed invention in comparison to those compositions falling outside the scope of the instant claims. In response, note that, the Examiner maintains that it is not clear to the Examiner as to how the data shows any unexpected and superior results; it seems as though while data is presented for the claimed invention, there is no comparison made to compositions falling outside the scope of the instant claims. In fact, the antimicrobial properties or characteristics shown by the data in the specification appear to be what one skilled in the art would expect from the combination of a carboxylic acid antimicrobial agent and surfactant; the data does not seem to present any data which would be considered to be unexpected and superior.

With respect to Wulff and Penniger et al, Applicant states that these references fail to remedy the shortcomings of Smith et al and Baker et al. In response, note that Wulff and Penninger et al are secondary references relied upon for their teaching of cocamidopropyl betaine and 1-hydroxy ethylidene-1,diphosphonic acid, respectively; the Examiner maintains that one skill in the art would be motivated to use cocamidopropyl betaine and 1-hydroxy ethylidene-1,diphosphonic acid in the compositions taught by Smith et al and Baker et al, with a reasonable expectation of success, because Wulff et al teach the use of cocamidopropylbetaine and Penninger et al teach the use of 1-hydroxy ethylidene-1,diphosphonic acid, respectively in similar detergent compositions while Smith et al and Baker et al teach the use of amphoteric surfactants and sequestering agents in general.

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory R. Del Cotto
Primary Examiner
Art Unit 1751

GRD
December 6, 2005